

Remarks

This Response is provided in response to a non-final Office Action mailed April 14, 2004. The Office Action rejected claim 19 under 35 U.S.C. §112, second paragraph and rejected claims 1-20 under 35 U.S.C. §102(b) as being anticipated by prior art.

The Applicant has amended claims 6, 8-10, and 16-20 to more particularly point out and distinctly claim the subject which the Applicant regards as his invention by making explicit that which one skilled in the art would regard as implicit by the terms of the originally submitted claims. The hereinabove amendments are believed to be proper, do not introduce new matter, have not been made in light of a prior art rejection for patentability, do not narrow the scope of the claims, and further serve to place the application in proper condition for reconsideration and allowance.

Rejection of Claims Under 35 U.S.C. §112

The Office Action rejected claim 19 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention because method 19 recites being dependent on system claim 6. To obviate this rejection, the Applicant has amended claim 19 to depend from claim 16. Therefore, the Applicant requests withdrawal of the rejection of claim 19, and passage of same to allowance.

Rejection of Claims Under 35 U.S.C. §102(b)

The Office Action further rejected claims 1-20 under 35 U.S.C. §102(b) as being anticipated by United States Patent No. 5,742,762 issued to Thomas H. Scholl et al., April 21, 1998 (Scholl '762).

The Applicant respectfully traverses the foregoing rejection and submits that the claimed invention as claimed on January 29, 2001 is, under 35 U.S.C. §102(b), patentable over Scholl '762, because every element of the claimed invention is not identically shown in Scholl '762. "For a prior art reference to anticipate in terms of 35 U.S.C. §102, every element of the claimed invention must be identically shown in a single reference." *See, In*

re Bond, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990), quoting *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 677, 7 USPQ2d 1315, 1317 (Fed. Cir. 1988).

Claims 1-5

Regarding claims 1-5, Scholl '762 fails to show the first element of claim 1, i.e., “a data resource request modifier, *adapted to intercept and modify a data resource request issued by a user requesting data from said network prior to said data resource request reaching a data server* in said network, to create a modified data resource request.” Scholl '762 shows “A conventional Web client 1, supporting a GUI 2, makes a request for information to a Web server 3... The Web server 3 recognizes that the information to be retrieved pursuant to the request must be obtained by the present invention 5, the network management gateway 5 (“NMG”), and the Web server 3 forwards the request to the present invention 5...” (see FIG. 3, and col. 6, lines 6-14 describing FIG. 3).

Scholl '762 fails to show a data resource request modifier, adapted to intercept and modify a data resource request issued by a user prior to the data resource request reaching a data server. Any modification of a data resource request issued by a user that is made by “the network management gateway 5 (“NMG”)” would occur after the data resource request has been received by a data server (Web server 3 of FIG. 3), and forwarded to “the network management gateway 5 (“NMG”),” (see FIG. 3, and col. 6, lines 6-14 describing FIG. 3).

Because Scholl '762 fails to identically show each element of the invention claimed by claim 1, the Examiner fails to provide a prima facie showing of anticipation under 35 U.S.C. §102(b) of claim 1. Accordingly, the Applicant requests withdrawal of the rejection of claim 1; the withdrawal of the rejections of claims 2-5 depending from claim 1; and passage of claims 1-5 to allowance.

Claims 6-10

Regarding claims 6-10, in light of the hereinabove amendments, Scholl '762 fails to show the first element of claim 6, “a data response modifier, adapted to intercept and modify a data response issued by a data server in said network in response to a data resource request issued by a user requesting data from said network, before said response reaches said user,

to create a modified data response, wherein said modified data response activates delivery of the data response from an alternate server in the network.”

Scholl '762 shows “The appropriate data is then collected in response by the managed network 6 and objects 8, and then sent to the network access means 7. From there the responses are transferred to the present invention 5, which converts the network management information in real-time, on the fly, to HTML documents ... The documents are then processed by the CGI 13 (*of the present invention 5*) and passed to a Web server 3, and then to the client 1 through the Internet, or otherwise,” (emphasis added) (see FIGS. 3 and 4, and col. 7, lines 10-30).

Scholl '762 fails to show a data response modifier that creates a modified data response, which activates delivery of the data response from an alternate server in the network. Rather, the Applicant submits, Scholl '762 shows that response data (which may utilize any number of protocols, for example: TCP/IP, SLIP, PPP, OSI, Frame Relay, proprietary, or others) is collected by the managed network 6 and objects 8, passed through the network access means 7 to the network management gateway 5, which converts the response data in real-time, on the fly, to HTML documents from the particular protocol of the response data, which is passed to a Web server 3, and then to the client 1. There is no showing by Scholl '762 that the real-time, on the fly, conversion from the particular protocol of the response data to HTML documents activates delivery of the data response from an alternate server in the network.

Because Scholl '762 fails to identically show each element of the invention claimed by claim 6, the Examiner fails to provide a prima facie showing of anticipation under 35 U.S.C. §102(b) of claim 6. Accordingly, the Applicant requests withdrawal of the rejection of claim 6; the withdrawal of the rejections of claims 7-10 depending from claim 6; and passage of claims 6-10 to allowance.

Claims 11-20

Regarding claims 11-20, as pointed out by the Examiner, because claims 11-20 represent method claims corresponding to system claims 1-10 and incorporate limitations in common to claims 1-10, the argument provided hereinabove for the patentability of claims 1-10 apply in


common to the respective method claims 11-20. Accordingly, the Applicant requests withdrawal of the rejection of claims 11-20 and passage of same to allowance.

Conclusion

The Applicant respectfully requests reconsideration and allowance of all of the claims pending in the application. This Response is intended to be a complete response to the non-final Office Action mailed April 14, 2004.

Should any questions arise concerning this response, the Examiner is invited to contact the below listed Attorneys.

Respectfully submitted,

By: 

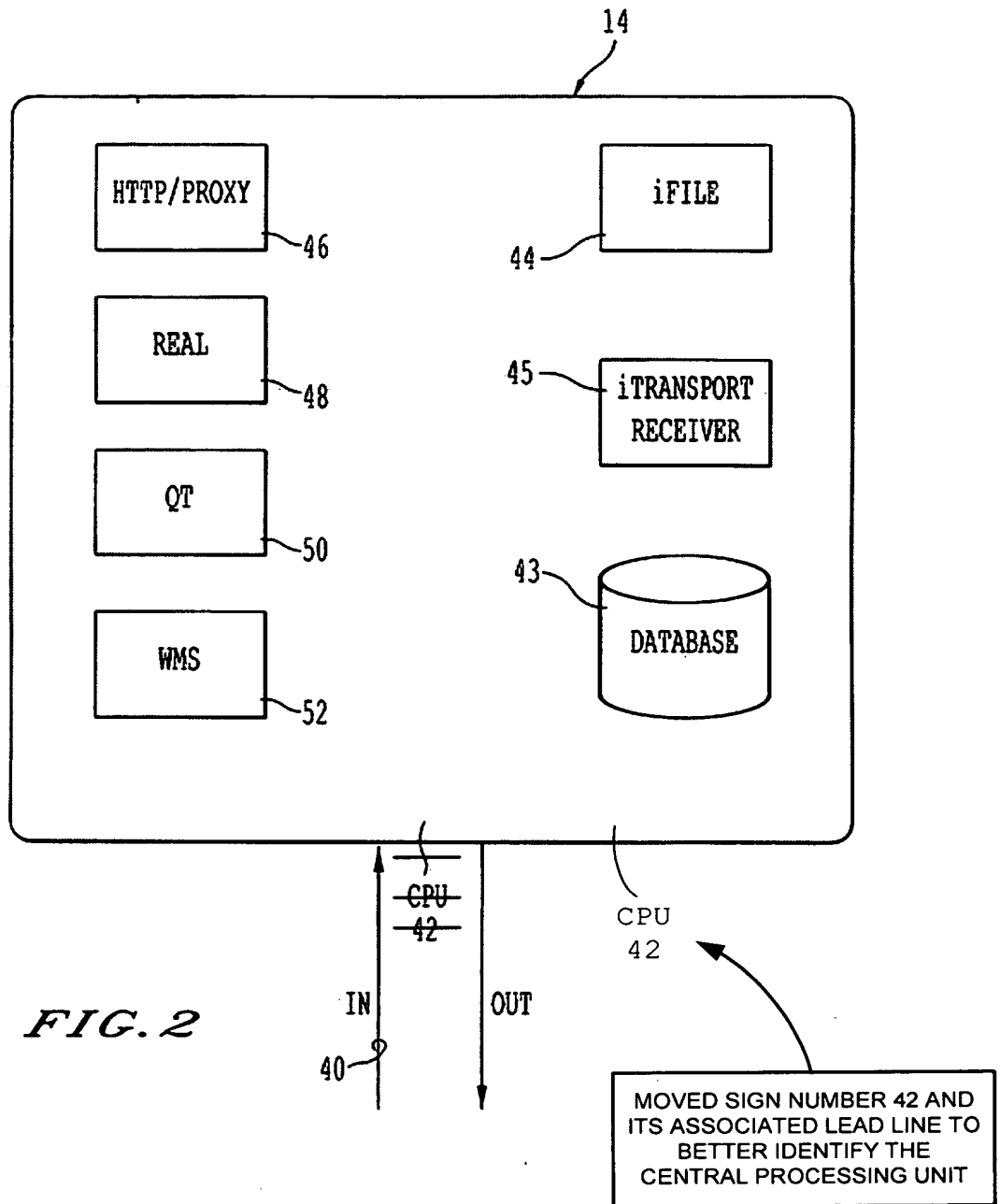
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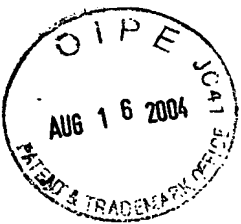
FIG. 1



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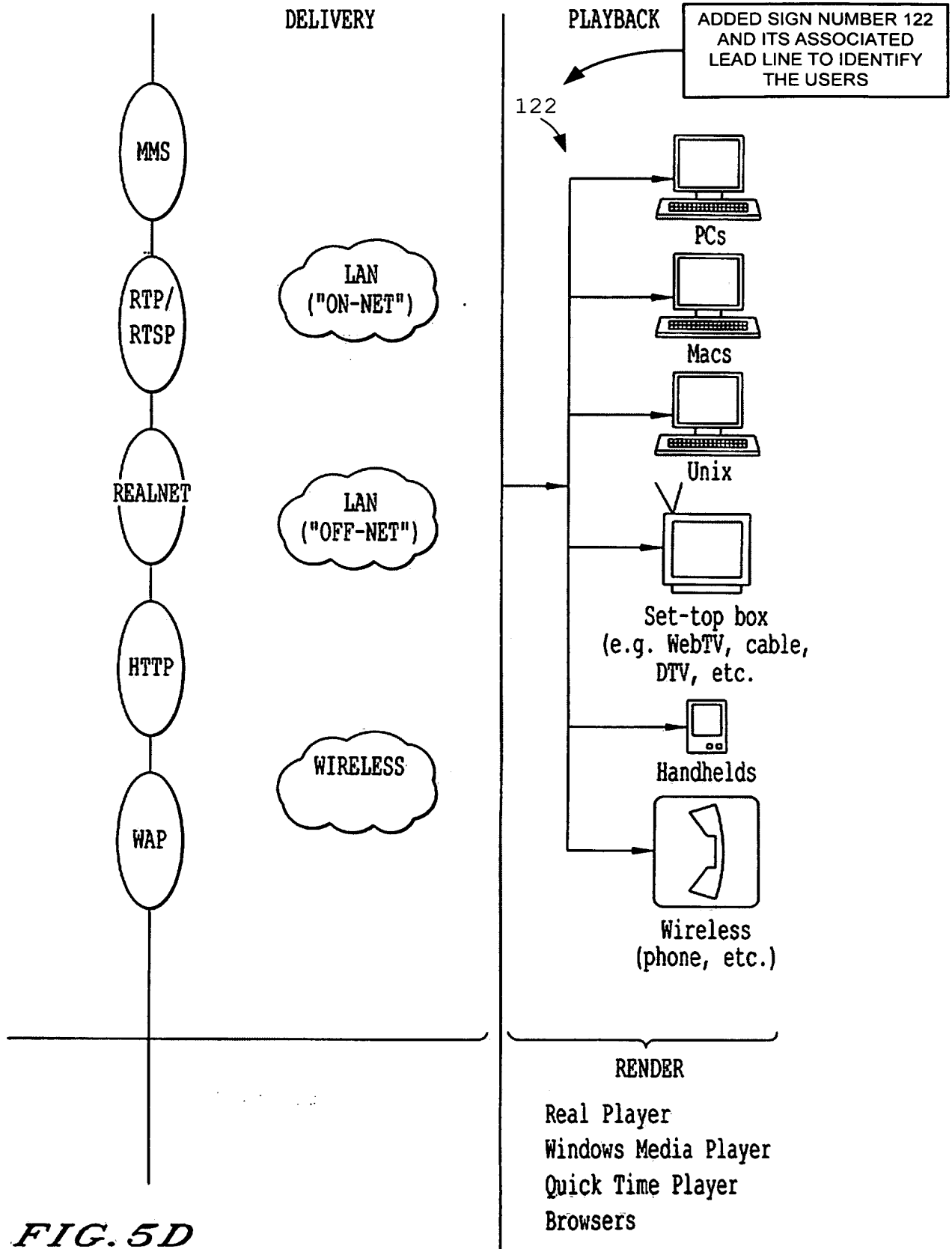
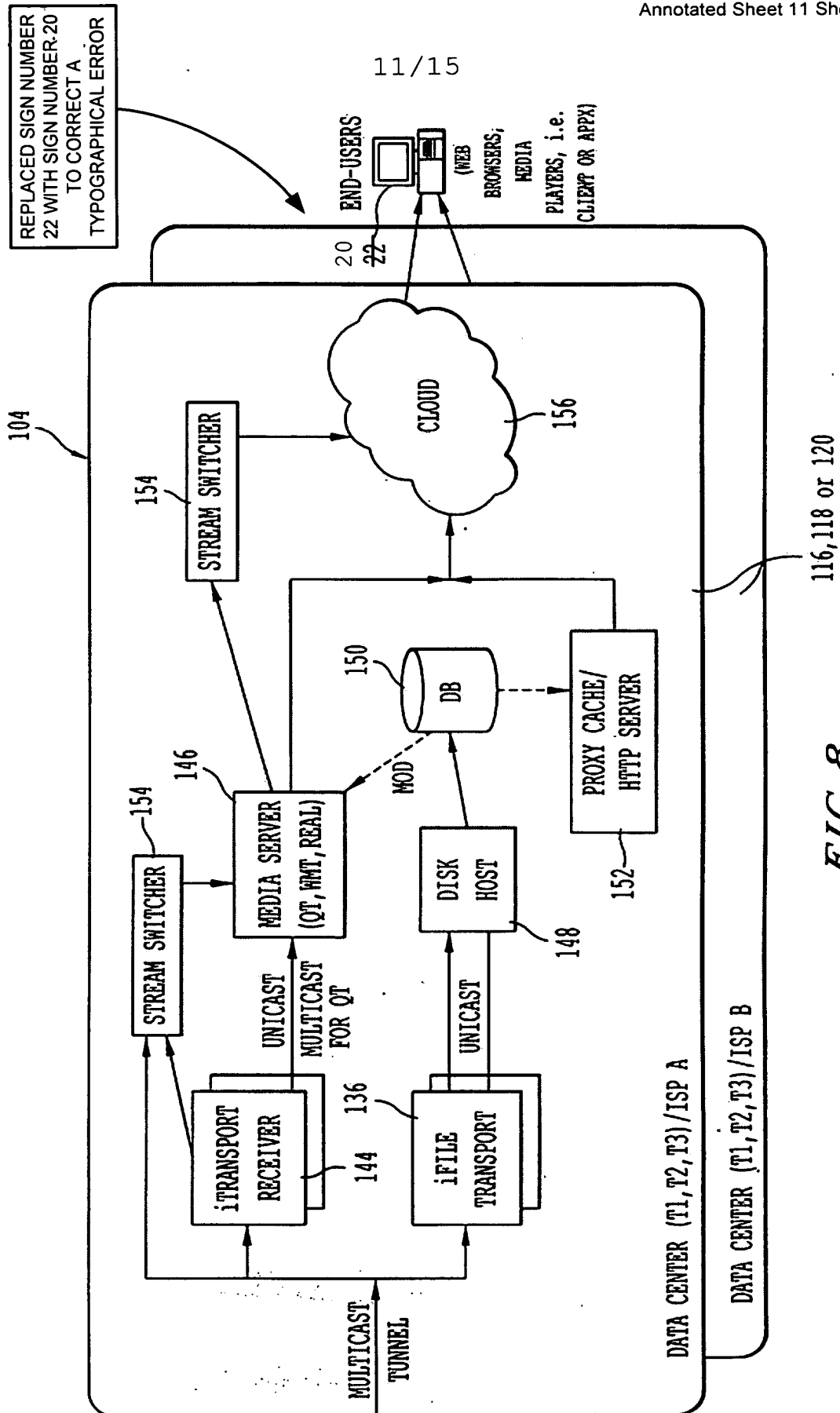


FIG. 5D



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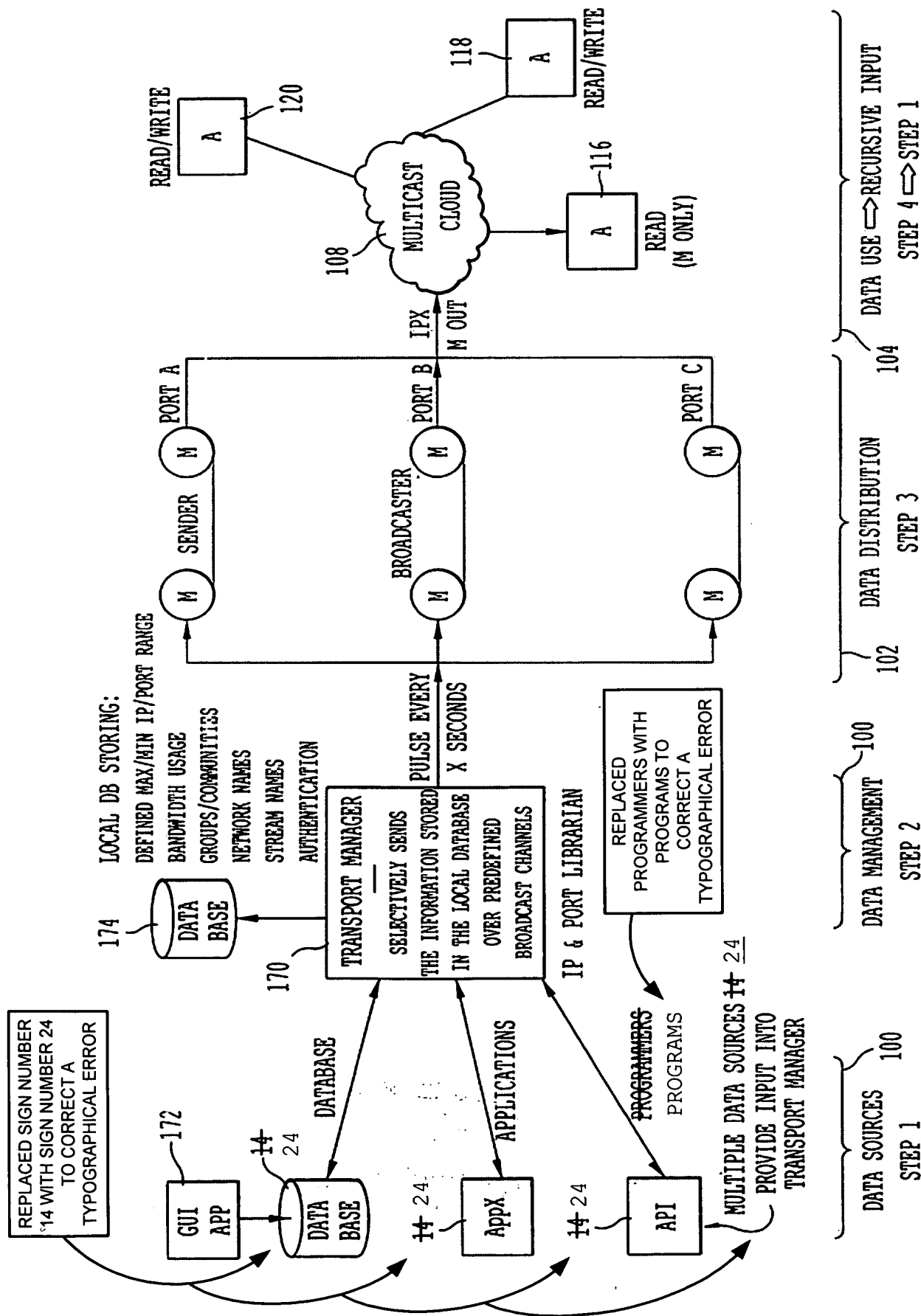
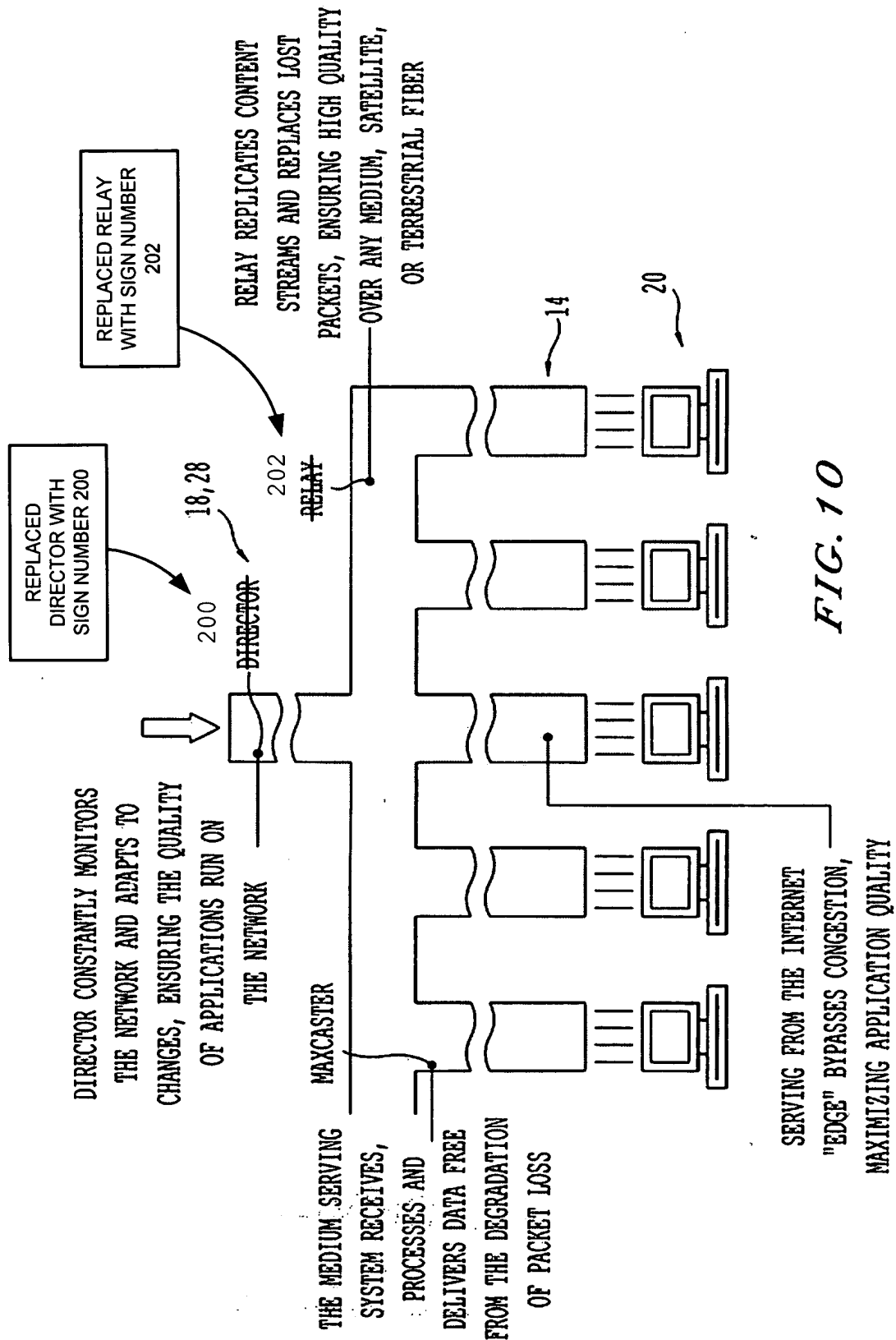


FIG. 9



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ADDED SIGN NUMBER 12
AND ITS ASSOCIATED
LEAD LINE TO SHOW THE
NETWORK

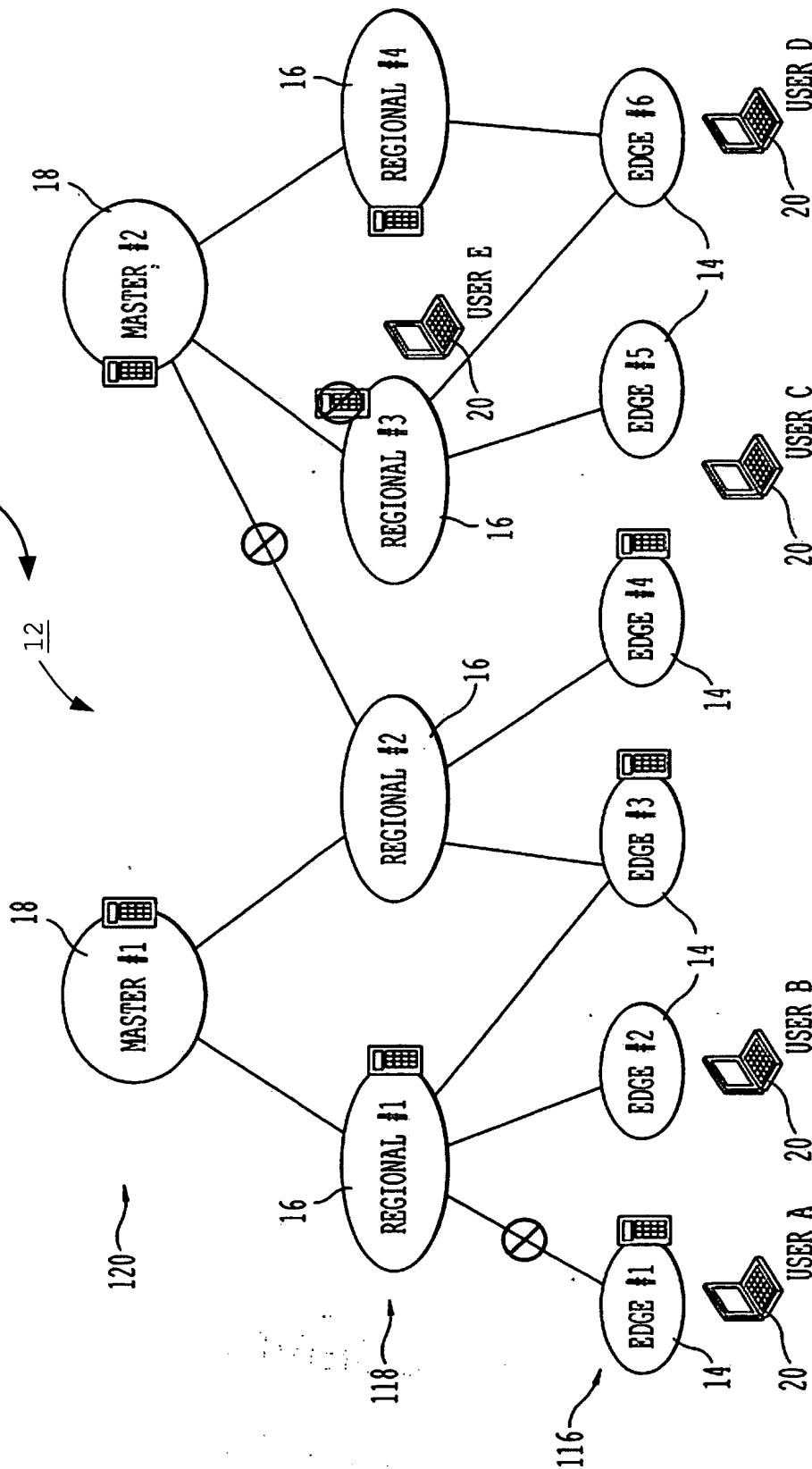


FIG. 12